JAMES R. BR... Clerk

Supreme Court of the United States

October Term, 1961

No. 355

MANNIE GOLDBERG,

Petitioner

—vs.—

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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No.

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—VS.—

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner, Mannie Goldberg, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit, entered in the above entitled case on May 24, 1961.

Citations to Opinions Below

The opinion of the Court of Appeals, printed in the Appendix hereto, *infra*, p. 1a, is reported in 290 F. 2d 729, 1961.

Jurisdiction

The judgment of the Court of Appeals was entered on May 24, 1961 (Appendix, *infra*, p. 15a). A petition for re-

hearing filed June 29, 1961, in the Court of Appeals was entertained by that Court and was denied by it on the merits on August 10, 1961 (Appendix, *infra*, p. 16a). The jurisdiction of this Court is invoked under 28 U.S.C. §1254 (1).

Questions Presented

Petitioner was convicted of perjury in stating (a) that he did not know one Chait before a certain date, and (b) Chait received no money from petitioner's business. The proof as to "(a)" consisted of direct evidence from one witness plus corroboration by a second witness testifying to oral unsworn "admissions" of petitioner. The proof as to "(b)" followed the same pattern plus documents showing expenditures of petitioner's business with no mention of money paid to Chait. The single "direct" witness testified with vagueness and inconsistency throughout. The "admissions" witness was of the basest credibility and systematically strove to read his prior grand jury testimony to the jury without accepting responsibility for present recollection thereof. The documentary evidence was perfectly consistent with the defendant's innocence. The questions are:

1. Should the case have been submitted to the jury where the "corroboration" consisted of oral, unsworn alleged admissions of defendant?

2. Assuming arguendo that the documentary evidence did "corroborate" those alleged "admissions", is a corroborated, oral unsworn admission sufficient proof of perjury without any direct evidence in the case at all?

3. Was the petitioner's conviction erroneous on the proofs herein? Did those proofs establish perjury beyond a reasonable doubt by either the testimony of two witnesses or one witness and corroborating circumstances?

4. Was the petitioner denied a fair trial by the admission in evidence of testimony from a witness who adopted his prior grand jury testimony as the trial testimony?

5. Was the petitioner denied a fair trial by the admission in evidence of testimony imputing to him the commission of a prior unrelated crime, and by the rereading of said testimony to the jury after it had retired to consider its verdict?

Statutes Involved

The case involves 18 U.S.C. §1621; and New York Penal Law, §2400. The text of these provisions is printed in the Appendix hereto, p. 18a.

Statement of the Case

Petitioner was convicted in the District Court, after a jury trial, on three counts of a four count indictment (D7a)[1] alleging violations of 18 U.S.C. §1621 (perjury)—under which statute the District Court's jurisdiction was invoked—and he was sentenced to three years' imprisonment on each count, to run concurrently, and fined $2,000 on each count (D195a; Appendix, *infra*, p. 2a).

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[1] "D—a" refers to the "Appellant's Appendix" (printed) in the court below, nine copies of which are filed herewith.